

Respondent contends that the injury arose from personal risk and, therefore, did not arise out of and in the course of claimant's employment. The Appeals Board disagrees. The risk was initially generated by conditions at claimant's employment, namely the fire in the cab of the truck which he was to drive. Even if the rescue of his daughter is to be considered a purely personal task and a personal risk, the source of the risk causing the injury should be considered dual. The Appeals Board therefore finds the claim should be considered compensable.

Respondent also contends that claimant failed to establish that the psychological injury arose out of and in the course of employment. The Appeals Board has previously held that this is not an issue over which the Appeals Board has jurisdiction on appeals from a preliminary order. This is so because the question is not whether the injury arose out of and in the course of employment but, instead, whether the psychological injury is traceable to an injury which arose out of and in the course of employment. Susan Cunningham v. Michael E. Michael, D.D.S. and Cincinnati Insurance Company, Docket No. 177,523 (1994). Having found that the original injury arose out of and in the course of employment, the decision to grant psychological treatment is not subject to review on an appeal from a preliminary order.

WHEREFORE, the Appeals Board finds that the preliminary Order entered by Administrative Law Judge Floyd V. Palmer dated January 25, 1996 should be, and the same is, hereby affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Stephen A. McManus, Kansas City, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director